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1 P R O C E E D I N G S

2 MR. AHEARN: Members of the jury, we are

3 here today because, as the evidence will show, FedEx

4 terminated Ms. Harris's employment for failing to perform

04:37:56 5 to expectations as a FedEx sales manager. But more

6 specifically, we are here today because Ms. Harris has

7 refused to accept responsibility for her own actions at

8 work; and in refusing to accept that responsibility,

9 Ms. Harris has chosen -- chosen instead to make false

04:38:25 10 allegations against others. That is what has brought us

11 all here today.

12 The evidence will also show some

13 additional things that you should consider. First, FedEx

14 didn't just terminate Ms. Harris the first time that her

04:38:47 15 performance started to decline. As you will learn, that is

16 not how things work at FedEx.

17 Everyone can have a bad day, a bad week,

18 even a bad year, and we have a company policy that provides

19 people with fair notice and time and an opportunity to

04:39:10 20 improve. You will get to see that policy. As you will

21 learn from the evidence, Ms. Harris was, in fact, given

22 such notice, such time, and such opportunity.

23 Second, over the course of nearly a year,

24 Ms. Harris made multiple internal complaints alleging

04:39:31 25 discrimination and mistreatment by Ms. Lamb. These

1 complaints were thoroughly and fairly investigated by
2 FedEx's Human Resources Department, and were determined to
3 be unsubstantiated.

04:39:52 4 Third, Ms. Harris failed to follow
5 specific instructions from her manager.

6 Fourth, Ms. Harris failed to deliver on
7 some basic straightforward items that she was given to
8 improve on.

9 Fifth, Fed Ex terminated Ms. Harris's
04:40:12 10 employment only as a last resort, and only after more than
11 a year of regular coaching, counseling, and warning, both
12 formal and informal, in an effort to help her improve.

13 No one person made the decision on their
14 own, as you will hear. The decision was reviewed by
04:40:35 15 several people, including the human resources department
16 and our professionals there, and was made only after it
17 became clear that Ms. Harris either could not or would not
18 do what she needed to do to keep her job.

19 Now, Ms. Harris disagrees, of course. She
04:40:57 20 has alleged that FedEx terminated her not because of her
21 documented failures in job performance, but because of the
22 color of her skin. She also claims that we retaliated
23 against her, that we disciplined and terminated her because
24 she complained about discrimination. Those are the
04:41:18 25 allegations. That's what is at issue here in this case.

1 Now, those being the issues at hand,
2 here's what I am going to ask you to do during the rest of
3 this trial. This is going to go on for several days. You
4 are going to hear and see a lot of evidence. You are going
04:41:39 5 to hear from a lot of witnesses. You are going to listen
6 to us lawyers talk quite a bit. But if you remember just
7 one thing from what I am telling you now, I want you to
8 remember this: As you hear from each witness, as you see
9 and read the documents, as you consider the evidence, ask
04:41:59 10 yourself, does this evidence or does this witness prove
11 that FedEx did what it did because of the color of
12 Ms. Harris's skin or because she complained about
13 discrimination?

14 As the evidence will show, the answer to
04:42:19 15 both is, no, FedEx did not.

16 Now, as the evidence will show, FedEx
17 recognizes that discrimination at work is always wrong. It
18 is in our policies. It is in our procedures. It's in our
19 training. Discrimination is absolutely forbidden
04:42:48 20 everywhere at FedEx, and when it occurs, there are real
21 consequences.

22 Why do we have that rule? As our
23 witnesses will explain, first, it's the right thing to do.
24 Second, it's because discrimination stops people from
04:43:08 25 reaching their full potential. We need our people to

1 succeed. It is the success of our people working every day
2 that made us the top cargo company in the world.

3 Now, speaking of our people, I want to
4 introduce you to some of the folks that you are going to
04:43:27 5 meet during this trial.

6 Will, can --

7 THE COURT: Switch over?

8 MR. AHEARN: First, this gentleman by the name
9 of Dave Russell. Now, Dave doesn't work for us anymore.

04:43:45 10 He is retired, living up in Montana. But he was Michelle
11 Lamb's boss when Jennifer Harris reported to Michelle and,
12 of course, that's Michelle right over there.

13 Mr. Russell is going to explain to you
14 some things about how our sales department works, why the
04:44:04 15 success of our sales team, especially district sales
16 managers like Ms. Harris, is so important to our company.
17 As a district sales manager, Ms. Harris played a critical
18 role. She was in charge of an entire team of sales account
19 executives.

04:44:22 20 By the way, you are going to hear a lot of
21 terms in this case, including account executives. It's a
22 salesperson. You will hear them referred to as "AEs," and
23 you will hear their managers, district sales managers,
24 referred to as "DSMs." I just want to make sure you
04:44:39 25 understand that.

1 As a DSM Ms. Harris was responsible, was
2 accountable not only for her own performance but for the
3 performance of multiple sales persons reporting to her.
4 It's a job with a lot of responsibility.

04:44:55 5 At FedEx we rely on our sales teams to
6 grow and maintain our business. We don't promote just
7 anyone to be a district sales manager. To be a DSM you
8 have to prove yourself, and Ms. Harris did. She was a
9 successful member of our sales team for many years.

04:45:14 10 You will hear about how that success
11 continued, at least at first, in her role as a district
12 sales manager.

13 You will hear about her success in fiscal
14 year 2018, which lead to her going to President's Club, as
04:45:36 15 was referred to. By the way, you are going to hear a lot
16 about fiscal years and fiscal quarters in this case. It
17 can be confusing, but it is simple. It runs from June 1st
18 to May 31st, so fiscal year 2018 started in June 2017 and
19 went to May 2018. And there will be witnesses who will
04:45:58 20 explain that again as well.

21 Now, in that year, fiscal 2018, Ms. Harris
22 and her team of AEs were one of the top performing sales
23 teams in the country. Ms. Harris was rewarded. She was
24 invited to President's Club. This is a very prestigious
04:46:15 25 event. You basically get to spend a weekend at a very nice

1 resort with some of the top leadership in the company.

2 But as you will hear from some of the
3 people I have introduced, I have introduced to you and will
4 introduce to you, FedEx needs our salespeople to be
04:46:33 5 successful every fiscal year. So when the calendar turned
6 to June 1st, 2018, a new fiscal year, fiscal year 2019
7 started. It's a clean slate, new opportunities, new goals,
8 new expectations.

9 The evidence will also show that these
04:47:05 10 goals are set the same way for every district sales manager
11 across the country.

12 And now I am going to introduce to you the
13 next person I want you to meet. This is Jimmy van Epps.
14 Mr. van Epps works in our solutions group. He is going to
04:47:39 15 explain to you how things work in terms of tracking sales
16 data and sales performance, how the fiscal years break
17 down, and how all the nuts and bolts of that works.

18 Now, as the evidence will show, as the
19 data will show, Ms. Harris and her team of AEs started to
04:48:01 20 struggle in fiscal year 2019. Package volume in her
21 district started to decline. You will hear that term in
22 this case quite a bit, "package volume." It means just
23 what it says. We make money shipping packages. And when
24 volumes go down, we don't make money. It's that simple.
04:48:18 25 It's a problem. And in fairness, this wasn't limited to

1 Ms. Harris's team. Other DSMs and other teams were
2 declining as well.

3 But as you will hear from our witnesses,
4 it's in the tough times that we need our leadership to step
04:48:32 5 up; and especially our sales leadership, including our
6 district sales managers. Much is expected of them, and
7 they are well rewarded when they succeed. They're paid
8 well. Ms. Harris made a six-figure salary. They earn
9 bonuses. But as I mentioned before, as a manager in sales
04:48:56 10 you are not just responsible for your own success, but for
11 the success of a whole team of salespeople.

12 You need to motivate the team. You need
13 to motivate yourself. You need to understand the market in
14 your district. You need to know the data. What are the
04:49:14 15 trends going on in the market for shipping services in that
16 district? Who are the new potential customers? For our
17 current customers, how are their needs changing? How are
18 their shipping habits changing?

19 At FedEx, you will learn, that we sit on
04:49:31 20 top of an ocean of data to help our sales teams answer
21 these critical questions every week. Our witnesses will
22 also explain that we need DSMs to know that data and use it
23 to focus on where the issues are in their district.

24 There is always new opportunities, always
04:49:48 25 somebody looking to start or expand a business. There is

1 always someone who is not happy with one of our
2 competitors. Sometimes it's the service. Sometimes it's
3 the price. Sometimes it's both. Sometimes they're not
4 happy with us.

04:50:04 5 We expect DSMs to know these issues, to
6 know the market in their district, to know the customers,
7 and to work with their AEs to identify and develop
8 opportunities, and close and keep customers, and ship more
9 packages. Being a DSM is stressful. It's hard work.

04:50:25 10 Sometimes you need to reach out for help.

11 In fiscal year 2019 when package volumes
12 in her district started to decline significantly,
13 Ms. Harris knew where to turn. She turned to none other
14 than Michelle Lamb, her manager. In October 2018, so about
04:50:46 15 midway through fiscal year 2019, Ms. Harris wrote an e-mail
16 to Ms. Lamb asking for weekly coaching meetings so that
17 Ms. Lamb could help Ms. Harris with ideas and advice, like
18 any boss should.

19 Ms. Lamb obliged happily. She wanted and
04:51:05 20 needed Ms. Harris to succeed. Ms. Lamb, in fact, is
21 accountable herself, accountable for Ms. Harris's success.
22 The evidence will show that Ms. Lamb gave a lot of guidance
23 to Ms. Harris, guidance on how to identify and work the
24 opportunities in her district, guidance about managing her
04:51:25 25 team and holding them accountable. She gave her other

1 advice and resources, but what did Ms. Harris do with that
2 information and those resources?

3 Unfortunately, she did not do enough.

4 Ms. Lamb, understandably, got frustrated. After several

04:51:41

5 months of meeting weekly with Ms. Harris, Ms. Lamb

6 ultimately started wondering whether Ms. Harris really

7 wanted to do what she needed to do to be a manager.

8 Then in February 2019, our witnesses will

9 explain that FedEx's executive sales leadership rolled out

04:52:01

10 a new program. It's called Coach to Grow 2.0. You are

11 going to hear that referred to, Coach to Grow 2.0.

12 Ms. Lamb met with Ms. Harris for three hours to explain

13 this new program and how she expected Ms. Harris to roll

14 out the program to her team and educate them on it.

04:52:19

15 When Ms. Lamb learned that Ms. Harris did

16 not role out the program as instructed, she met with her

17 again. This time for two hours. Now, during that meeting,

18 Ms. Lamb expressed to Ms. Harris, partially out of

19 frustration, and we all say things in frustration

04:52:38

20 sometimes, that she might be better off in a non-management

21 sales role, a role in which Ms. Harris had succeeded in the

22 past for years.

23 Now, Ms. Harris was not happy about that

24 comment, and that's understandable, but let's look at what

04:52:58

25 happened next in light of the situation at the time. At

1 that time Ms. Lamb had not issued any formal discipline.
2 Ms. Harris hadn't gotten a bad performance review. There
3 were still three months left in the fiscal year. There was
4 room and time to improve.

04:53:18 5 What did Ms. Harris do? Did she buckle
6 down and redouble her efforts?

7 At this time, in March 2019, shortly after
8 this aforementioned meeting about Coach to Grow, Ms. Harris
9 hired a lawyer. Now, is that a problem in and of itself?

04:53:38 10 Of course not. Everyone has the right to talk to a lawyer.
11 Everyone has the right to raise legitimate concerns, but at
12 FedEx we still expect you to do your job.

13 Right around this time the evidence will
14 show Ms. Harris made the first of three formal complaints.

04:53:58 15 These complaints were quite detailed, and you will have a
16 chance to read the reports on them. But when you see the
17 first complaint, I want to point out one thing that's very
18 interesting, very telling about this particular complaint.

19 One of the things Ms. Harris complained about was that her
04:54:18 20 boss was having so many meetings with her, meetings that
21 Ms. Harris had requested in writing.

22 Now, when Ms. Harris made her complaints,
23 of course, that is when our human resources team got
24 involved.

04:54:38 25 And let me pause here for a moment by

1 introducing you to some members of the -- of that team.

2 First, is a woman by the name of Kathie Walthall. Ms.

3 Walthall leads a team of human resources advisors and other

4 professionals who develop, update, and implement our many

04:55:10 5 company policies on employee and human resources matters,

6 and that includes, of course, our policies against

7 discrimination and retaliation. Ms. Walthall is going to

8 explain those policies to you, explain how we train on

9 them, and how we put them into effect every day.

04:55:41 10 Next, is a gentleman by the name of Mac

11 Chonoles. Now, Mac just transferred out to a new job in

12 California, but he is coming to the trial because during

13 the time when Ms. Harris was employed, he lead a team of

14 investigators, the team who handled Ms. Harris's

04:55:59 15 complaints. And Mac is going to talk about how he runs

16 that office, and how investigations work at FedEx.

17 The next is Michael Clarke. For the last

18 decade, Mr. Clarke has done nothing at FedEx other than

19 investigate complaints of discrimination and other policy

04:56:32 20 violations every day, day in and day out. He did not know

21 Ms. Lamb or Ms. Harris, had never met them. His department

22 reported through a totally separate chain of command all

23 the way to the top executive leadership at FedEx.

24 As Mr. Clarke will explain he had nothing

04:56:54 25 to worry about from Ms. Lamb, or the leadership in the

1 sales group, nothing to worry about at all. His job was to
2 find discrimination if it existed and to take action if he
3 found it. He had plenty of expertise in investigating
4 discrimination. He had found it before, and he was
04:57:15 5 prepared to find it again. He was prepared to blow the
6 whistle if there was something to blow the whistle on.

7 Another thing you will hear and see is
8 that Mr. Clarke reminded Ms. Lamb that while his
9 investigation was pending, she was to issue no discipline
04:57:34 10 to Ms. Harris. Ms. Lamb agreed and complied in writing.
11 Why did we ask her to do that? It's our process. It's our
12 rule to protect employees from retaliation, to protect the
13 integrity of our investigations.

14 As Mr. Clarke will explain, it is because
04:57:54 15 we need people to be free to bring complaints, and to have
16 them fully investigated before action is taken. Now,
17 Mr. Clarke will describe in detail everything he did to
18 investigate all three of Ms. Harris's complaints.

19 He interviewed Ms. Harris. He interviewed
04:58:15 20 Ms. Lamb. He interviewed other witnesses. He reviewed
21 documents. He wrote and received many e-mails, including
22 to and from Ms. Harris. He consulted with his boss. He
23 consulted with the legal department.

24 He wrote his conclusions in lengthy
04:58:35 25 written reports, which you will be given to read. And as

1 he will explain, and as those reports explain, ultimately
2 he concluded, based on everything he looked at, that while
3 Ms. Lamb could have handled some issues better, and we all
4 could sometimes, and she did get some coaching on
04:58:56 5 communication, she was not discriminating against
6 Ms. Harris because of the color of her skin.

7 In the meantime, unfortunately,
8 Ms. Harris's job performance continued to suffer. After
9 the numbers came in the end of May 2019, again, that's the
04:59:18 10 end of a fiscal year, Ms. Harris's team had the worst
11 performance of any of the teams reporting up to Lamb. Her
12 team failed to meet sales goals in four of four quarters of
13 fiscal year 2019.

14 So Ms. Lamb issued a letter of counseling
04:59:41 15 to Ms. Harris. As you will hear, it's one of the first
16 steps in our process for managing employees who are
17 struggling. I want to emphasize, as you'll hear from our
18 witnesses, we don't just fire people the first time they
19 make a mistake. We certainly do not fire an experienced
04:59:58 20 and successful salesperson the first time they have a bad
21 year or a bad month. As you will hear, the process that
22 lead to Ms. Harris's termination took many months, involved
23 multiple steps, and multiple opportunities to improve.

24 Now, one thing I want to point out here at
05:00:18 25 this point, is that Ms. Lamb at the time had another

1 district sales manager on a letter of counsel. His name
2 was Richard Holley. Richard Holley is a white man. He was
3 the district sales manager over in San Antonio, a district
4 that at the time was also struggling. Mr. Holley received
05:00:40 5 a letter of counseling from Ms. Lamb in March 2019, three
6 months before Harris. More about him later.

7 Now, Ms. Harris's letter of counseling
8 required her to propose a plan to Ms. Lamb called a
9 "Performance Improvement Plan." Let me give you another
05:00:59 10 abbreviation. It's called a PIP, Performance Improvement
11 Plan. It had multiple elements. And as you will hear
12 Ms. Harris -- Ms. Harris got to propose the terms of the
13 plan.

14 As would be the case with any other
05:01:14 15 employee in her position, Ms. Harris was given the rest of
16 the fiscal quarter to work on those items. And you will
17 see some of them were very straightforward with no argument
18 on whether she had met them or not met them at the end of
19 the prescribed time. For example, she proposed to close a
05:01:32 20 specific customer by the name of Global Healing. She
21 proposed -- she proposed, Ms. Harris proposed, to be at 100
22 percent of her revenue goals. 100 percent, not the
23 average, 100 percent. And, again, the evidence will show
24 those were Ms. Harris's proposals. They were her ideas.
05:01:53 25 They were her commitments.

1 Now, you will also hear testimony that
2 being put on a performance improvement plan is not a death
3 sentence at FedEx. It means just what it says. It is a
4 plan to improve your performance. We don't plan for people
05:02:10 5 to fail. Our people fail; our company fails. You can
6 bounce back if you do what you need to do.

7 Well, at the end of the first quarter of
8 fiscal year 2020, this is August 2020, Ms. Harris did not
9 close the customer. She did not close Global Healing. She
05:02:34 10 did not meet 100 percent of her revenue goal. She did not
11 meet her commitments. Although she met one element of her
12 performance improvement plan related to international
13 sales, she failed to meet six out of seven items.

14 At that point, if Ms. Lamb had wanted to,
05:02:51 15 under our procedures, she could have requested termination
16 right away, but she didn't. No. Ms. Lamb chose to give
17 Ms. Harris a second chance. She issued a letter of warning
18 in September 2019.

19 Now, that sounds serious because it is.
05:03:14 20 But just like a warning you get from the police when you're
21 pulled over for speeding, instead of getting a ticket, it
22 is still just a warning.

23 Back to Richard Holley for a minute.
24 Remember the white gentleman in San Antonio who received
05:03:30 25 the letter of counseling in March 2019? Well, in October

1 of 2019, one month after Ms. Harris got her letter of
2 warning, Mr. Holley also got a letter of warning after his
3 district failed to improve over several months.

4 In fact, as the data will show, Mr. Holley
05:03:48 5 and Ms. Harris were the two district sales managers with
6 the lowest performance of any sales team in Ms. Lamb's
7 region, one white, one African American, both on a letter
8 of warning.

9 As the evidence will show, Ms. Harris's
05:04:05 10 letter of warning required a second performance improvement
11 plan. That's right. A plan that gave her the rest of
12 another fiscal quarter to improve. This time, Ms. Lamb --
13 Ms. Lamb prepared the plan. Why? As you will hear,
14 Ms. Lamb was concerned that Ms. Harris had been too hard on
05:04:29 15 herself with the first one. And you will get to read the
16 second plan, and the first plan, and compare them.

17 Instead of 100 percent revenue goal this
18 time, Ms. Lamb just wanted Ms. Harris to meet the average
19 of other district sales managers in the region. Now,
05:04:49 20 Ms. Harris claims, as you heard, that expecting her to be
21 at least average was race discrimination.

22 Well, we disagree with that. Expecting
23 average performance is not discrimination. We expected
24 Ms. Harris to demonstrate a capability to improve. And, of
05:05:13 25 course, the goal of average performance was, in fact,

1 easier than the goal Ms. Harris had set for herself on the
2 first plan, which was 100 percent, but failed to meet.

3 Now, in the second plan, there were other
4 standards that were made simpler and easier for Ms. Harris
05:05:30 5 to meet as well. This time, there was no requirement to
6 close a specific customer. Why? Ms. -- well, the reason
7 is, Ms. Lamb did not want Ms. Harris's compliance to depend
8 on one customer's decision where they used FedEx as their
9 shipping provider or not. It was the customer's decision
05:05:51 10 at the end of the day.

11 As you will hear, the second PIP also had
12 much more simple, straightforward goals. For example,
13 Ms. Harris had to make sure that each of her salespeople
14 reporting to her proposed a pricing plan -- and you will
05:06:07 15 hear what a pricing plan is -- propose a pricing plan to at
16 least one customer per week. One per week. And as you
17 will learn, that's not hard to do, and Ms. Harris did not
18 make that happen. And you will learn from the evidence
19 that Ms. Harris simply did not do what she was being asked
05:06:27 20 to do on the second performance improvement plan.

21 In fact, right after the plan was put in
22 place with at least a couple of months left to work on it,
23 you'll hear Ms. Harris cleaned all the personal items out
24 of her office. She hadn't been fired yet. She was just on
05:06:48 25 a letter of warning. She was being asked to improve.

1 Cleaned out her office. She, it appears, gave up.

2 Now, as the evidence will show, despite
3 this, Ms. Lamb continued to work with Ms. Harris anyway,
4 continued to meet with her weekly, continued to ask her
05:07:07 5 about developing opportunities in her district to improve
6 sales and close new business. Continued to meet with her
7 about meeting the terms of the second plan, doing the nuts
8 and bolts things day in and day out that needed to be done.

9 Well, unfortunately, Ms. Harris did not
05:07:24 10 meet all of the terms of her second plan. She met two out
11 of five.

12 In the meantime, the last of Ms. Harris's
13 internal complaints was under investigation by Mr. Clarke,
14 a final investigation like the first two came back.

05:07:45 15 Mr. Clarke concluded after interviewing Ms. Harris, and
16 Ms. Lamb, and others, and looking at documents, and the
17 progress of events, that these were not race-based actions.
18 They were not retaliation. They were business issues.
19 They were performance issues.

05:08:01 20 Ultimately, Ms. Harris's employment was
21 terminated in January 2020.

22 Now, guess who was also asked to leave in
23 January 2020. None other than Richard Holley, a white man.
24 Why? Well, like Ms. Harris, Mr. Holley had also failed to
05:08:25 25 meet all the terms of his plan. He failed to improve his

1 district after multiple opportunities. And it is worth
2 mentioning at the time he had the second worst overall
3 performance in the region over the same time period as
4 Ms. Harris, and second only to Ms. Harris herself.

05:08:45

5 Ask yourself what does that say about
6 whether FedEx terminated Ms. Harris because of the color of
7 her skin? Which takes me back to my original point, and
8 this is important because it relates to your task.

05:09:09

9 To find for the defendant, to find for
10 FedEx in this case, you don't need to agree with every
11 single thing we did. You may find that you don't agree
12 with some of the decisions that our managers made. It may
13 not be what you would have done under the circumstances.
14 That's fine. We don't have to see eye to eye on
15 everything.

05:09:33

16 What I want you to do, again, as you look
17 at each piece of evidence and as you hear from each
18 witness, ask yourself, does this evidence or does this
19 witness prove, prove, that FedEx took action toward
20 Ms. Harris because of the color of her skin or because she
21 complained about discrimination?

05:09:54

22 We are confident that after you hear the
23 testimony, and you see the evidence, you will find that the
24 answer to those two questions is no, and we will ask that
25 you return a verdict in favor of FedEx.

05:10:16

1 Thank you.

2 (Conclusion of excerpt.)

3 COURT REPORTER'S CERTIFICATE

4

5 I, Kathleen K. Miller, certify that the foregoing is a
6 correct transcript from the record of proceedings in the
7 above-entitled matter.

8

9 DATE: Oct. 19, 2022 /s/ Kathleen K. Miller

10 Kathleen K. Miller, RPR, RMR, CRR

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/s [1] - 22:9	abbreviation [1] - 16:10	buckle [1] - 12:5
1	above-entitled [1] - 22:7	Building [1] - 2:4
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